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Proposed programme budget for the biennium 2018–2019

Administration of justice at the United Nations

Administration of justice at the United Nations and activities of the Office of the Ombudsman and Mediation Services

Twentieth report of the Advisory Committee on Administrative and Budgetary Questions on the proposed budget for the biennium 2018–2019

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the reports of the Secretary-General on the administration of justice at the United Nations (A/72/204) and on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/72/138). The Committee also had before it the report of the Internal Justice Council on the administration of justice at the United Nations (A/72/210). During its consideration of the reports, the Committee met with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 6 October 2017.

2. The report of the Secretary-General on the administration of justice (A/72/204) provides information on the functioning of the formal system for the calendar year 2016 as well as caseload statistics and observations on the operation of the system. The report also responds to specific requests of the General Assembly contained in its resolution 71/266. The report on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/72/138) provides information on the activities of the Office in 2016.

3. The present report contains the observations and comments of the Advisory Committee on the above reports of the Secretary-General. In section II, the Committee provides its recommendations on the administration of justice and on the responses of the Secretary-General to the requests of the General Assembly in resolution 71/266. Section III contains the recommendations of the Committee with regard to the Office of the United Nations Ombudsman and Mediation Services.

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II. Formal system of administration of justice at the United Nations

A. Caseload

4. In his report, the Secretary-General presents a review of the functioning of the formal system of administration of justice in 2016 (A/72/204, paras. 4–89). The report includes statistics pertaining to the latest caseload of the different entities within the system: the Management Evaluation Unit, the United Nations Dispute Tribunal, the United Nations Appeals Tribunal and the Office of Staff Legal Assistance. This information can be summarized as follows:

(a) The Management Evaluation Unit received 944 management evaluation requests in 2016 (compared with 873 in 2015), nearly 71 per cent of which came from staff serving in peacekeeping missions. This caseload included several group requests related to retrenchment exercises, salaries and benefits and entitlements;

(b) The United Nations Dispute Tribunal received 383 applications in 2016 (compared with 438 in 2015), and issued 221 judgments, 64 in Geneva, 107 in Nairobi and 50 in New York (compared with 126 in 2015). The Dispute Tribunal disposed of 401 applications (compared with 480 in 2015). The number of pending applications decreased from 275 in 2015 to 257 at the end of 2016;

(c) The United Nations Appeals Tribunal received 170 appeals (compared with 191 in 2015) and issued 101 judgments (compared with 114 in 2015). The number of pending appeals decreased from 147 in 2015 to 96 at the end of 2016. The number of interlocutory motions also decreased, from 81 in 2015 to 45 in 2016;

(d) The Office of Staff Legal Assistance received 1,756 new requests for legal advice (compared with 1,502 in 2015). The Office acted as counsel before the United Nations Dispute Tribunal in 71 cases (compared with 415 in 2015) and before the United Nations Appeals Tribunal in 322 cases (compared with 16 in 2015). According to the report, the fluctuation was mostly due to the submission of a group of 245 applications from former staff members of the International Tribunal for the Former Yugoslavia related to permanent appointments (see A/72/204, table 12 and para. 53).

5. **The Advisory Committee notes that the number of requests for the services of the Office of Staff Legal Assistance and the Management Evaluation Unit increased from 2015 to 2016, while the number of applications and appeals received by the Appeals and Dispute Tribunals decreased over the same period, together with the number of pending applications and appeals.**

B. Resource requirements for the biennium 2018–2019

Background

6. Pursuant to General Assembly 69/203, the Secretary-General appointed an Interim Independent Assessment Panel to conduct an assessment of the system of administration of justice that was introduced in 2009. Following the submission of the Panel's report (A/71/62/Rev.1), the Secretary-General issued his report on the findings and recommendations of the Panel (A/71/163), which included a proposal to establish 15 additional posts and to appoint three additional permanent judges to replace the ad item judges (see A/71/163, para. 158).

7. In its resolution 71/266, the General Assembly endorsed the conclusions and recommendations contained in the report of the Advisory Committee (A/71/436),

which, in the context of the consideration report of the Secretary-General and the proposed resource requirements associated with the report, did not consider that any case had been made for the immediate and exceptional consideration of additional funding for the system of administration of justice outside the cycle of the normal budget process (ibid., para. 4). In the same resolution, the Assembly decided to consider the issues related to the resource requirements for improving the functioning of the administration of justice system at its seventy-second session (resolution 71/266, para. 47).

8. At the time of its consideration of the proposed programme budget for the biennium 2018–2019, the Advisory Committee noted that the proposal did not include additional resource requirements for the administration of justice (see A/72/7, para. 20). In fact, the proposal reflected reductions primarily resulting from the discontinuation of non-recurrent resources for the three ad litem judges whose mandate was to expire on 31 December 2017 (A/72/6 (Sect.1), para. 1.173).

9. In his report on administration of justice, the Secretary-General proposes additional resource requirements amounting to $4,596,300 (net of staff assessment) (A/72/204, para. 172 (m)). The Advisory Committee notes that these requirements include requirements already proposed in his previous report on the administration of justice (A/71/163, paras. 151–155 and 158, and A/71/62/Rev.1), and which, in most cases, show little additional detail to support the requests for additional resources. **The Committee is therefore of the view that such requirements could have been included in the proposed programme budget for 2018–2019.**

10. The Secretary-General's proposal includes $3,946,900 under section 1, $272,400 under section 29A and $377,000 under section 29D, which is proposed to be charged against the contingency fund for the biennium 2018–2019 (A/72/204, para. 172 (m)). The supplementary information provided to the Advisory Committee indicates that the revised estimates for the administration of justice, inclusive of the above proposal, would then total $320,376,200 (net of staff assessment) for the biennium 2018–2019. The Committee notes that no additional resources are requested for the Office of the Ombudsman and Mediation Services (see also para. 35 below).

Staffing requirements

11. The supplementary information indicates that an amount of $2,506,600 is requested for the proposed establishment of 13 new posts (3 P-4, 5 P-3, 3 General Service (Other level) and 2 General Service (Local level)).

12. Four new posts are proposed to be established in the Office of Staff Legal Assistance, including three Legal Officers (P-4), and one Legal Assistant (1 General Service (Local level)), to be located in New York (1 P-4), Geneva (1 P-4) and Nairobi (1 P-4 and 1 General Service (Local level)). According to the Secretary-General, these posts would provide the level of expertise required for more complex cases and would improve the functioning of the Office. The Secretary-General's report indicates that presently, in view of the expiration of the experimental period of the voluntary supplemental funding mechanism on 31 December 2017, additional staff funded from this mechanism can be hired only on a temporary basis (see A/72/204, paras. 132–135).

13. The report also indicates that the contribution of the voluntary supplemental funding mechanism between April 2014 and June 2017 totalled $2,490,798, which represents an average monthly contribution of $63,866 (see A/72/204, annex IV). The Advisory Committee notes, however, that the report contains no details pertaining to the exploration of options for ensuring the sustainability of the mechanism.

14. **The Advisory Committee reiterates its view that the voluntary supplemental staff funding mechanism has provided sufficient funding to recruit a number of staff and encourages the Secretary-General to intensify his efforts to increase awareness of the usefulness of the mechanism. The Committee recommends that the General Assembly regularize the voluntary staff funding mechanism and also recommends that the Assembly request the Secretary-General to explore options to ensure the sustainability of the mechanism with a view to making proposals in his report on the administration of justice (see A/70/420, paras. 27 and 28 and A/71/436, para. 7).**

15. **Given the viability of the above mechanism to supplement the staffing resource requirements for the Office of Staff Legal Assistance, the Advisory Committee recommends against the establishment of four new posts in the Office. The Committee also recommends that updated information on staff contributions under the voluntary supplemental funding mechanism be provided to the General Assembly.**

16. **With regard to the need to provide an increased level of expertise for complex cases, the Advisory Committee noted in its previous report that two temporary positions of Legal Officer at the P-4 level funded by the voluntary supplemental funding mechanism were in the process of being filled (A/71/436, para. 8). The Committee notes that while the report of the Secretary-General makes reference to the increased caseload of the Office of Staff Legal Assistance, the Secretary-General's current request for additional Legal Officers at the P-4 level in the Office is mostly linked to the increased complexity of cases requiring a higher level of skill (A/72/204, para. 147). The Committee considers that a higher level of skill could be achieved without the necessity of establishing new posts.**

17. Two posts are proposed to be established in the Management Evaluation Unit: one Legal Officer and one Legal Assistant (1 P-3 and 1 General Service (Other level)), based on the consistently high volume of requests for management evaluation and the extensive consultations required for this process. The current staff complement of the Unit includes three P-4 Legal Officers (2 from the regular budget and 1 from the peacekeeping support account) as well as one P-5 and three General Service (Other level) posts. The Secretary-General's report indicates that from 2010 to 2016, the Unit received an average 930 requests per year. In view of this high number of requests, the timelines of 30 and 45 days applicable to the management evaluation process are extremely difficult to meet (A/72/204, paras. 129 and 130). The Advisory Committee notes from the statistical information provided that, despite these constraints, the management evaluation process prevents many cases from moving forward to litigation: of the 944 requests filed in 2016, 120 requests (or 13 per cent) had been challenged by staff members before the Dispute Tribunal by 31 March 2017 (ibid., para. 17). **Taking these observations into account, the Advisory Committee considers that the additional capacity in the Management Evaluation Unit is justified at this time. With regard to support staff, the Committee is of the view that the Unit can continue to operate with the present complement of three Legal Assistants. Consequently, the Committee recommends that the General Assembly approve resources for a Legal Officer (P-3) position under general temporary assistance and recommends against the establishment of a Legal Assistant (General Service (Other level)) post in the Management Evaluation Unit. Non-post resources should be adjusted accordingly.**

18. Six posts are proposed for establishment in the registry of the Dispute Tribunal in lieu of the corresponding number and levels of positions currently provided under general temporary assistance, including three Legal Officers (P-3) and three Legal

Assistants (2 General Service (Other level) and 1 General Service (Local level)), to be located in New York (1 P-3 and 1 General Service (Other level)), Geneva (1 P-3 and 1 General Service (Other level)) and Nairobi (1 P-3 and 1 General Service (Local level)). These posts would support the three new permanent judge positions, which are proposed to be established in lieu of the three existing ad litem judges. **Given that the Advisory Committee recommends against the establishment of three new permanent judges (see para. 22 below), it also recommends against establishing the six posts in the registries of the Dispute Tribunal and recommends instead that the existing temporary positions be extended for the period from 1 January to 31 December 2018.**

19. One new post of Legal Officer (P-3) is proposed to be established in the Registry of the United Nations Appeals Tribunal in New York to support the judges in view of the ongoing caseload. **Given that the caseload of the Appeals Tribunal shows a recent decline (see para. 4 (c) above), the Advisory Committee reiterates that it does not see any merit in the proposal to establish a new legal officer post in the registry of the Appeals Tribunal (see A/71/436, para. 11) and consequently recommends against the establishment of one Legal Officer (P-3) post in the Registry. Non-post resources should be adjusted accordingly.**

20. **Overall, with regard to the Secretary-General's proposal to establish 13 new posts for the administration of justice, the Advisory Committee recommends that the General Assembly approve one position of Legal Officer (P-3) in the Management Evaluation Unit, and recommends against the establishment of the other 12 proposed posts. Non-post resources should be adjusted accordingly.**

Non-post requirements

21. The proposed resources for non-post requirements amount to $2,089,700. Under non-staff compensation, requirements amounting to $1,557,100 would provide: (a) compensation for three full-time permanent judges of the Dispute Tribunal, in lieu of the existing three ad litem judges, one in New York, one in Geneva and one in Nairobi; (b) payments of interlocutory motions adjudicated by the judges of the Appeals Tribunal; and (c) the monthly stipend for the President of the Appeals Tribunal.

22. With regard to the proposal to replace the three ad litem judges with three permanent judges, the Advisory Committee notes that the caseload of the Dispute Tribunal appears to have stabilized, with a decline in the number of new applications from 2015 to 2016, as well as a decline in the number of pending applications from 2014 to the end of 2016 (see para. 4 above). The Committee also notes that the number of applications and judgments differ markedly between the three locations of the Dispute Tribunal (see A/72/204, tables 6 and 8). **The Committee reiterates that the possibility of reducing the number of judges in the future, or of redeploying them between duty stations, should be preserved (see A/71/436, para. 15). Accordingly, the Committee recommends against the replacement of the three ad litem judges with three permanent judges for the Dispute Tribunal and recommends the extension of the existing three ad litem judge positions for 12 months, from 1 January to 31 December 2018, as proposed as an alternative by the Secretary-General.**

23. With respect to the judges of the Appeals Tribunal, the Secretary-General proposes compensation of $600 be paid to them for each interlocutory motion (which is equivalent to the remuneration given to the non-drafting judges sitting on each appeal). The Secretary-General considers that judges should be remunerated for their adjudicative work, which is not confined to substantive appeals.

Interlocutory motions must be dealt with prior to adjudication on the merits (A/72/204, para. 137). In previous reports, the Secretary-General had already noted that ruling on procedural motions requires the judge to review the entire case file, a time-consuming process. Furthermore, much of this judicial work must be done between sessions in order to deal with interlocutory matters in a timely manner (see A/71/163, para. 140, A/70/187, paras. 70–73, and A/69/227). The information provided by the Secretary-General shows that, on average, there were 51 interlocutory motions per year between 2010 and 2016 (A/72/204, table 10).

24. With regard to the current remuneration of the appeals judges, the Advisory Committee was informed, upon enquiry, that they are paid honorariums for each appeal and that they usually dispose of appeals in panels of three judges (one presiding judge and two participating judges). The Appeals Tribunal typically holds three sessions per year, each for a duration of two weeks. In line with General Assembly resolution 63/253, the presiding judge in a case receives $2,400 in remuneration for each judgment and each participating judge receives $600 per judgment. Given the average caseload of 35 judgments per session and the set payment amounts, in 2015 and 2016 each judge of the Appeals Tribunal, including the President, has received, on average, between $15,000 and $20,000 per session. The present remuneration scheme only provides for the judicial work adjudicated during the sessions. In this regard, the Interim Independent Assessment Panel had noted in its report that most motions are filed when the Appeals Tribunal is not in session (A/71/62/Rev.1, para. 373).

25. **The Advisory Committee notes that the processing of interlocutory motions between the sessions of the Appeals Tribunal is needed for the proper functioning of the system of administration of justice and that the related work should therefore be compensated. Consequently, the Committee recommends that the General Assembly approve the proposed remuneration of $600 for each interlocutory motion adjudicated by a judge of the Appeals Tribunal, starting on 1 January 2018. The Committee also recommends that the Secretary-General continue to provide information on the workload of the judges and the related expenditures in future reports.**

26. The Secretary-General also proposes to pay the President of the Appeals Tribunal a monthly stipend of $1,500 for the administrative work required in connection with the Tribunal. **The Advisory Committee acknowledges, in this instance as well, that the proper functioning of the system of administrative of justice requires administrative work on the part of the President of the Appeals Tribunal and that this work should be compensated. Accordingly, the Committee recommends that the General Assembly approve payment of a stipend to the President of the Appeals Tribunal in the amount of $1,500 per month, starting on 1 January 2018.**

27. The non-post requirements also include an amount of $45,000 under experts to provide for the travel expenses of members of the Internal Justice Council, facilitators and speakers for a commemorative event to mark the tenth anniversary of the internal justice system at the United Nations. Upon enquiry, the Advisory Committee was informed that the commemorative event will take the form of a seminar and that the requested amount of $45,000 would cover the travel expenses of three members of the Internal Justice Council (who are not based in New York) and six external facilitators and speakers. In addition, amounts of $2,500 under hospitality and $2,500 under supplies and materials are requested to facilitate the event. **In the absence of detailed travel cost estimates, the Committee is not in a position to recommend approval of additional resources for this purpose. Should the Office wish to hold the commemorative event, its costs should be**

absorbed within existing resources. In this connection, the Committee would encourage the use of pro bono speakers and facilitators.

28. With regard to the actions requested by the Secretary-General to be taken by the General Assembly contained in his report (A/72/204, para. 172), **the Advisory Committee recommends that the Assembly:**

(a) **Approve resources for one Legal Officer (P-3) position under general temporary assistance in the Management Evaluation Unit;**

(b) **Regularize the voluntary supplemental funding mechanism for the Office of Staff Legal Assistance;**

(c) **Approve the extension of the three ad litem judges and the current incumbent judges for a period of 12 months, from 1 January to 31 December 2018;**

(d) **Approve the extension, for 2018, of the temporary staff currently supporting the three ad litem judges, consisting of three positions of Legal Officer (P-3), one each in Geneva, Nairobi and New York, two positions of Legal Assistant (General Service (Other level)), one each in Geneva and New York, and one position of Legal Assistant (General Service (Local level)) in Nairobi;**

(e) **Approve payment of $600 for each interlocutory motion adjudicated by a judge of the United Nations Appeals Tribunal starting on 1 January 2018;**

(f) **Approve payment of a stipend to the President of the United Nations Appeals Tribunal in the amount of $1,500 per month starting on 1 January 2018.**

III. Activities of the Office of the United Nations Ombudsman and Mediation Services

29. In his report on the activities of the Office of the United Nations Ombudsman and Mediation Services the Secretary-General indicates that the Office opened 2,633 cases in 2016 (2,026 from the Secretariat, 428 from the funds and programmes and 179 from the Office of the United Nations High Commissioner for Refugees representing a 10 per cent increase over the caseload for 2015 (A/72/138, para. 22). For the Secretariat, 53 percent of the cases were reported from peacekeeping missions, including political missions (ibid., para. 24). Reflecting a trend from previous years, the main issues were related to jobs and career (26 per cent of cases), evaluative relationships (23 per cent of cases) and compensation and benefits (16 per cent of cases).

30. The Advisory Committee was informed, upon enquiry, that in 2016 the Office dealt with 146 cases (approximately 7 per cent of the total number of cases) relating to pension and separation benefits, of which 80 cases originated from field missions. The Office facilitated efforts by stakeholders to create synergies and to ensure a flow of information between the Organization and the United Nations Joint Staff Pension Fund in a timely manner (see also the forthcoming report of the Advisory Committee on the Pension Fund).

31. The utilization rate of the services of the Office in the Secretariat (the relationship between the overall number of staff and the number of cases received) was almost 5.5 per cent in 2016 compared with 4.4 per cent in 2015. The rate was highest among internationally recruited staff (5.6 per cent). The utilization rate shows a steady and significant increase over the years (A/72/138, para. 39, and

figure XIV). The Advisory Committee was informed, upon enquiry, that the Office attributes this caseload trend to the following two possible factors: (a) staff and managers are becoming increasingly comfortable contacting the Office; and (b) the increasing number of cases may reflect a high level of frustration among staff owing to different factors, including concerns over various reform efforts and the downsizing of missions.

32. In terms of mediation activities, the Secretary-General indicates that the Office of the United Nations Ombudsman and Mediation Services opened 134 cases in 2016 compared with 87 cases in 2015. Of the 134 cases opened in 2016: 64 cases were mediated; 57 cases reached resolution; and 58 cases could not proceed to mediation because one of the parties declined to mediate. The resolution rate of the cases actually mediated by the Office was 89 per cent (see A/72/138, para. 53). According to the information provided to the Advisory Committee, a resolution rate of 80 per cent is the usual "industry target". **The Committee notes with satisfaction the high resolution rate of cases actually mediated and encourages the Office of the Ombudsman and Mediation Services to continue its efforts in informal dispute resolution.**

33. In its resolution 71/266, the General Assembly welcomed the analysis of the root causes of conflict included in the previous report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/71/157), stressed the importance of improving management performance and staff communications and urged the Secretary-General to address the systemic issues identified in the report in order to improve upon the policies and procedures of the Organization. In his present report, the Secretary-General summarizes the major systemic issues observed by the Office since its inception and highlights some of these issues under two headlines: performance management; and behaviour management and accountability (A/72/138, paras. 59–71). The Advisory Committee notes that information on the progress made in the implementation of the recommendations contained in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services is annexed to the report of the Secretary-General on the administration of justice (see A/72/204, annex III). **The Committee considers that the report on the activities of the Office of the United Nations Ombudsman and Mediation Services should also provide information on actual policy changes resulting from the effort of the Ombudsman's Office to help resolve systemic issues.**

34. With respect to outreach, the report indicates that the Office conducted a total of 354 outreach activities in 2016, including 171 workshops, training sessions, information sessions and presentations, targeting over 4,000 staff, and that it held 170 meetings with senior officials and partnership consultations with internal and external stakeholder groups (A/72/138, para. 75). Upon enquiry, the Advisory Committee was informed that approximately 1,700 United Nations employees have participated in outreach activities organized by the Office between 2013 and 2016. **The Committee welcomes the outreach efforts undertaken by the Office of the United Nations Ombudsman and Mediation Services.**

35. Pursuant to paragraph 47 of resolution 71/266, in which the General Assembly decided that issues related to resource requirements for improving the functioning of administration of justice would be considered at its seventy-second session, the report provides information on strengthening resources for enhanced informal conflict resolution (A/72/138, paras. 109–112). The Advisory Committee notes that no formal proposal for additional resources to increase the activities of the Office of the United Nations Ombudsman and Mediation Services is included in the reports currently under consideration.

36. **The Advisory Committee reiterates the continued importance of the informal part of the system of administration of justice in taking early action to prevent or limit cases of litigation. The Committee recalls its previous observations that informal resolution is an important part of the system and continues to encourage efforts to increase its use when appropriate (A/71/436, para. 36).**

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Proposed programme budget for the biennium 2018–2019

Report on the use of the commitment authority and request for a subvention to the Residual Special Court for Sierra Leone

Twenty-first report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2018–2019

I. Introduction and background

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the use of the commitment authority and request for a subvention to the Residual Special Court for Sierra Leone (A/72/384), in which a subvention of $5,931,800 for the biennium 2018–2019 is requested to enable the Residual Special Court to continue to carry out its mandate. In his report, the Secretary-General requests the General Assembly to: (a) approve a subvention in the amount of $5,931,800 for the period from 1 January 2018 to 31 December 2019 for the Residual Special Court for Sierra Leone, with the understanding that any voluntary contributions received would reduce the utilization of the funding provided by the United Nations, which would be reported in the performance reports on the programme budget for biennium 2018–2019; and (b) appropriate an amount of $5,931,800 as a subvention to the Residual Special Court for Sierra Leone under section 8, Legal affairs, of the proposed programme budget for 2018–2019 (ibid., para. 59). In his report the Secretary-General also provides information: on the use, in 2017, of the commitment authority authorized by the General Assembly in its resolution 71/272 A; on the current financial situation of the Residual Special Court; and on options for future financing arrangements of the Court. During its consideration of the report, the Committee met with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 11 October 2017.

2. The report of the Secretary-General was prepared in response to General Assembly resolution 71/272 A, in which the Assembly authorized the Secretary-General to enter into commitments in an amount not to exceed $2.8 million to

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supplement the voluntary financial resources of the Residual Court for the period from 1 January to 31 December 2017, as a bridging financing mechanism, and requested the Secretary-General to report on the use of the commitment authority. In the same resolution, the Assembly endorsed the conclusions and recommendations contained in the report of the Advisory Committee (A/71/613), including the recommendation that a long-term financial solution be identified for the Court. The report of the Secretary-General addresses the use of the commitment authority granted for the Court for the period from 1 January to 31 December 2017 and provides information on the options for the future financing arrangements for the Court.

3. In his report, the Secretary-General recalls that the Residual Court was established by the Agreement between the United Nations and the Government of Sierra Leone in August 2010, with the concurrence of the Security Council, with the mandate to carry out a number of vital residual functions of the Special Court for Sierra Leone. The Special Court itself was established in 2002, with the primary purpose of prosecuting persons who bore the greatest responsibility for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law, as well as crimes under relevant Sierra Leonean law, committed within the territory of Sierra Leone. The Special Court indicted 13 individuals. Three indicted persons have died and one remains at large. Nine individuals, including Charles Ghankay Taylor, the former President of Liberia, were convicted and sentenced to terms of imprisonment ranging from 15 to 52 years (A/72/384, para. 6).

4. The Residual Court, which commenced operations on 1 January 2014, immediately following the closure of the Special Court, carries out its functions at its interim seat in The Hague, with a branch/sub-office in Freetown for witness protection and support and the coordination of defence issues (A/72/384, para. 8). The functions of the Court include investigations, including the holding of an administrative hearing concerning the violation of conditional early release by one indicted individual in 2016; maintaining, preserving and managing the archives of the Special Court and the archives of the Residual Special Court itself; engaging with witnesses to address their needs; supervision of the enforcement of sentences; and responding to requests for information and evidence and with respect to claims for compensation from national prosecuting authorities (ibid., para. 7).

II. Recent activities of the Residual Special Court

5. In his report the Secretary-General indicates that since the commencement of operations the Residual Court has made significant progress in reviewing and building on the structures and systems necessary for the proper functioning of the institution. In May 2017 the Court began reviewing the Rules Governing the Detention of Persons Awaiting Trial or Appeal or in Custody under the Supervision of the Residual Special Court (A/72/384, paras. 9 and 10).

6. In terms of its functions, the Residual Court continues to actively monitor and provide support to over 100 witnesses in Sierra Leone, as well as to witnesses located outside the country, and has conducted a nationwide comprehensive threat assessment for all witnesses, including the implementation of protective measures (A/72/384, para. 12). The Court, which also has responsibility for the supervision of the enforcement of sentences for persons convicted by the Special Court, currently has seven convicts in custody, one in the United Kingdom of Great Britain and Northern Ireland and six in Rwanda (ibid., para. 17) and provides assistance to national prosecuting authorities. Additional functions include: maintenance and

storage of, and access to, the archives, including the archives of the Special Court; the upgrading of the Court's electronic records management software; and the holding of the 3rd plenary meeting of the judges, in Freetown on 1 and 2 December 2016, to review rules and procedures, including a draft code of professional ethics and conduct for judges and proposed amendments to the rules, as well as to conduct judicial elections (ibid., paras. 24–28).

7. In his report the Secretary-General indicates that the Special Court for Sierra Leone has made a significant contribution to international criminal justice and that preserving its legacy is an important element of the work of the Residual Court, including its standing as the first international criminal court in history to adjudicate cases on crimes relating to child soldiers, attacks on peacekeepers and forced marriage. In that regard, the report details the non-remunerated activities in which the judges and other officials of the Court have participated over the past year in order to promote the legacy of the Special Court (A/72/384, paras. 29–34).

III. Current financial situation, resource requirements and request for a subvention

8. The report of the Secretary-General provides information on the intensive fundraising efforts of the Oversight Committee[1] and the principal officials of the Residual Court, including broadening of the donor base. These efforts include targeted communications to Member States and regional organizations (for example, letters and notes verbales), as well as bilateral meetings and briefings at different levels highlighting the dire funding situation of the Court. The report indicates that, despite this range of efforts, there are, at this stage, no prospects for any future voluntary contributions (A/72/384, paras. 47–52).

9. The total resource requirements of the Residual Court are estimated at $5,931,800 for the biennium 2018–2019, representing the entirety of the subvention request in view of the total absence of forecasted voluntary contributions for the biennium. In the light of the current financial situation of the Court, the Secretary-General indicates that the Court will not be able to continue its work in 2018 without the approval of an additional subvention (A/72/384, para. 35).

10. The Advisory Committee was informed, upon enquiry, that the review and approval of the budget of the Residual Court is a function of the Oversight Committee, composed of the Government of Sierra Leone, the United Nations and significant contributors to the Residual Court. The Oversight Committee also assists the Court in obtaining funding and provides advice and policy direction on all non-judicial aspects of the operations of the Court. The Committee was also informed that the Government of Sierra Leone provided in-kind support to the Special Court, including to the sub-office of the Court in Freetown, and security personnel. No voluntary contributions were received in either 2016 or 2017 from the Member States sitting on the Oversight Committee.

11. **The Advisory Committee is extremely concerned that no pledges or contributions are forthcoming and considers that this matter requires the personal engagement of the Secretary-General, with a view to increasing the level of voluntary contributions. The Committee stresses the need for the Residual Court to intensify its efforts to seek voluntary contributions, and**

[1] The Oversight Committee is composed of the Government of Sierra Leone, the United Nations and significant contributors to the Residual Court. Currently the following countries are members of the Committee: Canada, the Netherlands, Nigeria, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

expects those efforts to yield results, including by broadening the donor base for the Court and developing more innovative fundraising approaches.

12. **The Advisory Committee recognizes that requests for a subvention do not constitute formal budget proposals, nevertheless, the Committee reiterates its view that, as a matter of general principle, any request for a subvention from the regular budget should be fully justified (see A/71/613, para. 12). In the case of the Residual Court, this would allow the General Assembly to scrutinize its resource requirements and the staffing of the Court in view of the total absence of any voluntary funding. Furthermore, the Committee expects that the Court will continue to undertake all efforts to exercise budgetary discipline and to identify operational efficiencies.**

Staffing requirements

13. The report indicates (A/72/384, annex III) that staffing requirements consist of a total of 13 full-time staff members based at the two locations (Freetown and The Hague), with the Residual Court relying on short-term consultancies, expert services, interns and pro bono services to supplement its staff resources, as required:

(a) The Hague Office staff consisting of six staff members: one Registrar (D-2); one Prosecution Legal Adviser (P-4); one Legal Officer in the Registrar's Office (P-4); one Associate Legal Officer (P-1); one Archiving Officer (P-2); and one Office Manager (P-2). In addition, one position, funded by general temporary assistance (General Service (Local level)), will provide archiving assistance;

(b) The Freetown sub-office consisting of seven staff members: one Senior Legal Officer (P-4); one Associate Defence Legal Officer (P-1); three Witness Protection and Support Supervisors/Officers (National Professional Officers); one Administrative Assistant (General Service (Local level)); and one Cleaner (General Service (Local level)).

14. Additional details on staffing requirements by category, level and location for 2018–2019, inclusive of judicial functions are provided in the report (A/72/384, annex III). The report also indicates that the Registrar is the only senior full-time staff member of the Residual Court, with the President, judges (called from the roster as and when needed), the Prosecutor and the Principal Defender all working remotely, only as necessary, and remunerated on a pro rata basis (ibid., para. 44).

15. The annual requirements for compensation to judges are estimated at $182,500 in 2018 and in 2019. The Advisory Committee was informed, upon enquiry, that the compensation for judges for 2018 and 2019 comprises $52,800 for non-judicial functions and $129,700 for judicial functions in each year. The Committee notes that, despite the absence of any related judicial activity in recent years (see A/71/613, para. 15), related resource requirements continue to be reflected in the request for subvention. **The Committee notes that the requirements include resources for the costs of judicial activities that have not taken place in previous years. The Committee reiterates its view that the Residual Court should adopt a more realistic approach to budgeting for judicial and other activities that reflect the actual needs of the Court and past experiences, as well as efforts to identify further efficiencies, without prejudice to the judicial requirements of the Court (ibid., para. 16).**

16. The Advisory Committee was provided, upon enquiry, with the job descriptions of the 13 full-time staff in both locations. The Committee notes that that staff requirements include the posts of Associate Legal Officer (P-1) and the post of Office Manager (P-2) in The Hague, providing additional legal support to

the Registry and performing general administrative duties, respectively, while the post of Associate Defence Legal Officer (P-1) in Freetown serves as focal point for convicted persons and their family members. In this connection, the Committee was also informed that, following a threat assessment conducted between late 2016 and early 2017, the number of witnesses considered vulnerable and requiring protection and support had decreased from 161 to 109. The Committee also notes that six convicts are in custody in Rwanda.

17. The Advisory Committee notes that the Oversight Committee has already approved the budget for biennium 2018–2019 and that the posts of the Residual Court are not part of the staffing table financed under the programme budget of the United Nations.[2] **The Committee is of the view that the functions of the Associate Legal Officer (P-1) and Associate Defence Legal Officer (P-1) posts should be performed by National Professional Officer posts in each location, given the increasingly residual nature of the Special Court, and that alternative staffing arrangements should be established to provide administrative services in lieu of the Office Manager (P-2) and Cleaner (General Service (Local level)) posts. While recognizing that the staffing requirements are not being submitted for approval of the General Assembly, the Committee stresses that, considering the chronic and persistent funding shortfalls, the Court should ensure that only the most essential staffing requirements are funded.**

Non-staffing requirements

18. The requirements for travel are estimated at $300,600 for each year of the biennium, compared with $290,100 for 2017. Upon request, the Advisory Committee was provided with a breakdown of the travel requirements: the Committee notes with concern the escalating travel requirements at a time when judicial activity is minimal and the workload of the Residual Court appears to be declining. The Committee also notes that the expenditures relate to trips for fund-raising purposes, despite the ineffectiveness of past efforts in raising additional funds for the activities of the Court. **In light of the persistent scarcity of financial resources, the Committee continues to stress that the Court should limit travel requirements to travel directly associated with its core functions, for example through measures such as the combining trips, advance booking of air tickets and the use of alternative means of communication, including videoconferencing. The Committee reiterates that the primary consideration in authorizing official travel should be whether direct face-to-face contact is necessary for the implementation of the Court's mandate (see also A/71/613, para. 18).**

19. The report indicates estimated non-staff requirements for each year of the biennium 2018–2019, including a total of $588,900 for contractual services, of which $538,900 is for non-judicial services and $50,000 for judicial services (see A/72/384, annex II). The report indicates that, among other efficiency measures introduced, the sub-office of the Court in Freetown is co-located with the National Witness Unit, while the interim seat of the Court in The Hague is co-located and continues to share an administrative and technical platform with the International Tribunal for the Former Yugoslavia (A/72/384, paras. 41–46). **The Advisory Committee continues to stress that further efforts should be made to lower the costs of the Court and to identify efficiencies.**

[2] The budget for the biennium 2018–2019 was approved by the Oversight Committee on 26 July 2017.

IV. Future financing arrangements for the Residual Special Court

20. The Secretary-General provides information in his report on alternative options for the future financial arrangements for the Residual Court in view of recent General Assembly resolutions 67/246, 70/248 A and 71/272 A endorsing the concerns of the Advisory Committee in this regard. The Secretary-General also indicates that the Secretariat has not been able to identify any additional alternative financing options for the Court apart from those that have already been examined (see A/72/384, para. 54) and that a further review was conducted of the options for financing the Court that it had previously identified (ibid., para. 55). The Secretary-General indicates that the International Residual Mechanism for Criminal Tribunals will continue to provide logistical and administrative support to the Court on a cost-reimbursable basis upon the closure of the International Tribunal for the Former Yugoslavia (A/72/384, para. 54).

21. The Advisory Committee recalls its observations and recommendations regarding the need for further analysis and development of existing options, as well as the possible identification of other options for a long-term solution to the financing of the Residual Court (see A/71/613, para. 23). With regard to a comparative assessment of co-locating the offices of the Court with the International Residual Mechanism, the Secretary-General maintains in his report that the cost of relocating the Court to Arusha would be greater than maintaining it in The Hague, and he also indicates a number of logistical challenges and operational risks (A/72/384, para. 43). Upon enquiry, the Committee was provided with the comparative analysis and was informed that the Court had considered the possible consolidation of financial and human resources, however, the distinct mandate of the respective institutions, including the fact that the Court is not a United Nations body, imposed limitations in this regard. The Committee was also informed that cost savings are being derived from existing administrative-sharing arrangements.

22. **The Advisory Committee acknowledges the efforts to examine alternative financing options for the residual activities of the Residual Court, however, it is not convinced of the comprehensiveness or rigour of the approach taken thus far. The Committee is of the view that co-locating the Court to the premises of the International Residual Mechanism in Arusha requires further consideration, particularly given the possible savings and economies of scale associated with the nationalization of staff positions and the possibility of cost-sharing support arrangements, including by the International Residual Mechanism. The Committee continues to stress the compelling need for a sustainable long-term financing solution for the Court, not involving an institutionalized dependency on the provision of subventions from the United Nations programme budget.**

V. Conclusions and recommendations

23. **The Advisory Committee reiterates its concern regarding the sustainability of voluntary contributions to fund the activities of the Residual Court and legacy activities (A/70/7/Add.30, para. 21, and A/71/613, para. 23). The Committee therefore recommends that the General Assembly request the Secretary-General to analyse the options concerning the long-term arrangements for the Residual Court in greater detail, including by identifying possible savings and economies of scale, and to report thereon in his provision of details on the use of the commitment authority.**

24. **The Advisory Committee also notes that, after three consecutive requests for subventions to support the Residual Court, including the current request for the biennium 2018–2019, the practice is now no longer exceptional in nature. At the same time, the Committee notes that there is no change to the voluntary nature of the funding arrangements for the Court.**

25. **In view of the projected funding shortfall for both 2018 and 2019, the Advisory Committee therefore recommends that the General Assembly authorize the Secretary-General to enter into commitments, as a bridging financing mechanism, in an amount not to exceed $2,300,000 for the period from 1 January to 31 December 2018. The Committee recommends that the Assembly request the Secretary-General to report, during the main part of its seventy-third session, on the use of the commitment authority.**

26. **The Advisory Committee reiterates that the final use of the commitment authority will depend upon the receipt of voluntary contributions from donors. The Committee continues to stress that its recommendations are based on the condition that:**

(a) **The Residual Court intensifies its efforts to seek voluntary contributions, including through more innovative fundraising approaches;**

(b) **If voluntary contributions are received in excess of the remaining requirements for the Residual Court for 2018, any corresponding funding provided under the commitment authority to the Court for the period would be refunded to the United Nations;**

(c) **Additional measures for achieving efficiencies in the Residual Court are taken.**

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Programme budget for the biennium 2016–2017

Proposed programme budget for the biennium 2018–2019

Human resources management

United Nations common system

Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations

Administrative and financial implications of the decisions and recommendations contained in the report of the International Civil Service Commission for the year 2017

Twenty-second report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2018–2019

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the statement submitted by the Secretary-General (A/C.5/72/3 and A/C.5/72/3/Corr.1) in accordance with rule 153 of the rules of procedure of the General Assembly on the administrative and financial implications of the decisions and recommendations contained in the report of the International Civil Service Commission for 2017. The Committee also had before it the report of the Commission for the year 2017 (A/72/30 and A/72/30/Corr.1). During its consideration of the statement, the Committee met with representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 7 November 2017.

2. The statement indicates that the decisions and recommendations of the Commission would have financial implications for the programme budget of the United Nations starting with the biennium 2016–2017 and the budgets of peacekeeping operations starting with the financial period 2017/18. The decisions and recommendations of the Commission relate to three issues: (a) remuneration of the staff in the Professional and higher categories: base/floor salary scale, in respect of separation payments; (b) remuneration of staff in the General Service and other

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locally recruited categories: survey of the best prevailing conditions of employment in Vienna and adjustment of dependency allowances on the basis of the new salary scale; and (c) conditions of service in the field: danger pay (A/C.5/72/3, para. 1).

II. Remuneration in the Professional and higher categories: base/floor salary scale (separation payments)

3. According to the statement, following the adoption by the General Assembly of its resolution 70/244, in which it approved a unified salary scale, a 1 per cent increase in the base General Schedule scale of the comparator, the United States federal civil service, was implemented, with effect from 1 January 2017. In addition, changes with respect to tax rate schedules and deduction amounts were introduced for 2017 at the federal level and for the District of Columbia. The International Civil Service Commission recommends an increase of 0.97 per cent in the base/floor salary scale for staff in the Professional and higher categories with effect from 1 January 2018. While this increase would be implemented through the standard no-loss/no-gain procedure by increasing the base/floor salary scale and commensurately decreasing post adjustment multipliers, which would generally be cost neutral in terms of net remuneration, it would have implications in respect of separation payments (ibid., paras. 3–5).

4. Paragraph 6 of the statement indicates that the Commission's recommendations would entail an estimated increase in the proposed programme budget of the United Nations for the biennium 2018–2019 of $99,000. With respect to peacekeeping operations, the increases are estimated at $16,400 for the financial period from 1 July 2017 to 30 June 2018 and $32,800 for the financial period from 1 July 2018 to 30 June 2019.

III. Remuneration in the General Service and other locally recruited categories: survey of best prevailing conditions of employment in Vienna and adjustment of dependency allowances based on the new salary scale

5. The statement indicates that following its survey conducted in Vienna, with a reference date of April 2017, the International Civil Service Commission recommended a new salary scale and revised dependency allowances for the General Service category of the organizations of the common system in Vienna. The recommended salary scale for the Vienna-based organizations would be 3.3 per cent higher than the current scale. The financial implications for the United Nations are estimated at $391,000 for the programme budget for 2016–2017 and $710,400 for the proposed programme budget for 2018–2019 (ibid., paras. 7–9).

IV. Conditions of service in the field: danger pay

6. It is indicated that under the review cycle previously decided upon by the International Civil Service Commission, the level of danger pay is to be reviewed every three years, starting in 2017. The Commission had decided to request its secretariat to put forward options to address the methodology for the adjustment of danger pay for both categories of staff. For locally recruited staff, the Commission had decided to update the reference year of the applicable General Service salary scales from those in effect in 2012 to those in effect in 2016 and to apply 30 per cent to the net midpoint of those scales (ibid., paras. 10 and 11).

7. The statement indicates that the financial implications of the Commission's decision on the revised level of danger pay are estimated at $17.4 million per annum system-wide, representing an increase of approximately $3,724,900 under the proposed programme budget for 2018–2019. The financial implications for peacekeeping operations are estimated at $4,201,800 for the financial period 2017/18 and $8,403,500 for 2018/19 (A/C.5/72/3/Corr.1, para. 12).

V. Other matters

Post adjustment

8. Paragraphs 107–131 of the report of the International Civil Service Commission reflect the Commission's discussion of post adjustment issues and related decisions, without reference to the financial implications. Upon enquiry as to the impact on salaries of the 2016 cost-of-living survey, the Advisory Committee was informed that both decreases and increases in the salaries of Professional staff were indicated across different duty stations. Duty stations for which salary decreases were indicated included Geneva (4.7 per cent), South Sudan (8.5 per cent), the Russian Federation (9.4 per cent) and Azerbaijan (14.1 per cent), and those for which salary increases were indicated included Montreal (2.1 per cent), Mozambique (5.0 per cent) and the Central African Republic (7.8 per cent). The Committee was also informed that the Commission's salary-setting policy was based on a comparison of the survey-based post adjustment index, updated to the date of implementation of the results, and the pay index prevailing on that date. For instance, while the pay level was 6.3 per cent higher in Geneva than in New York, the cost of living for Geneva was only 2.5 per cent higher than for New York.

9. The Advisory Committee was informed upon enquiry that while it was difficult to assess the full financial impact of post adjustment changes, as they were dependent on unpredictable macroeconomic factors such as inflation and exchange rate fluctuations, projected post adjustment multiplier rates were provided in the context of the proposed programme budget, and the actual monthly post adjustment multiplier rates were reported in the context of the first and second performance reports.

Remuneration of international judges of the Extraordinary Chambers in the Courts of Cambodia

10. The Advisory Committee recalls that in the context of the request for a subvention to the Extraordinary Chambers in the Courts of Cambodia (A/72/341), it was informed that the amount of the net remuneration paid to the international judges of the Extraordinary Chambers was equal to the gross (rather than net) remuneration of a staff member at the D-2 level. The Committee's observations and recommendations in this regard are contained in its related report (A/72/7/Add.7, paras. 14–17).

Translation of the report of the International Civil Service Commission for 2017

11. The Advisory Committee notes that the report of the International Civil Service Commission for 2017 was not fully translated into all the official languages, with the annexes being issued only in English.

VI. Conclusion

12. The financial implications arising from the decisions and recommendations of the International Civil Service Commission are summarized in paragraph 13 of the statement (A/C.5/72/3/Corr.1). **The Advisory Committee notes the financial implications of the decisions and recommendations of the Commission.**

13. **The Advisory Committee recommends that the General Assembly take note of paragraph 14 of the statement that, should the Assembly approve the recommendations of the Commission:**

(a) **Requirements for the biennium 2016–2017 for the United Nations will be addressed, as necessary, in the context of the second performance report for the biennium 2016–2017, as appropriate, and requirements for the biennium 2018–2019 will be taken into account in the context of the revised estimates: effect of changes in rates of exchange and inflation for the period;**

(b) **Requirements for the budgets for peacekeeping operations will be addressed, as necessary, in the context of the performance reports for the financial period from 1 July 2017 to 30 June 2018 and in the context of the upcoming proposed budgets for the financial period from 1 July 2018 to 30 June 2019.**